Govt. Yl-27—M.804—21-12-27.

Law (GP) (1929) Department

1115. SERIES.

G.O. No. 4381

DATED 11- 11- 29

[Despatch Abstract.]

Courts - Village Panchayat - Koteshwar and Ultur - Coondapur taluk - South Kanara district - Abolition and reconstitution.

Scott. II-27—40,004—6-11-28.

Law (General) (1929) Department.

MS. SERIES.

G.O. No. 3803

DATED 1 - 10-1929.

[Despatch Abstract.]

LEGAL ASSISTANCE - Syed Hamid Shah - Main, District Court, South Kanara - Pleader's Fee - Rs.40/- sanctioned.

G.F. 80.

LAW (GENERAL) DEPARTMENT.

L.S. 4256 (B)

Received ..... 192 *Registered* 18.9. 1929.

1979 (B)

Subject.

Legal Assistance to Government servants - Amin Syed Hamad Saiba - payment of fees to Vakil - sanction - requested.

ENCLOSURES.
No .....
.....
Spare copies .....

Ref.C1- ~~No.~~ 6140-29.

Station Mangalore, *Dated the* 14th September 1929.

From (Name) G. W. Wells, Esquire, M.A., I.C.S.,

(Designation) Dt. Magistrate of South Kanara.

To The Secretary to the Government of Madras,

Law (General) Department,

Madras.

Sir,

I request that Government may be pleased to sanction the payment of fees of Rs.40/- to M.R.Ry. K. Narsing Naik, Pleader, Kasargod, who defended Syed Hamad Saiba, an Amin of the District Court, South Kanara in C.C.87 of 1929 on the fil of the Sub Magistrate, Kasargod.

2. The case was instituted on the complaint of one Kumbe against the Amin and four others, for offences alleged to have been committed in the course of the execution of a delivery warrant entrusted to the Amin. At the instance of the District Judge, South Kanara, I authorised the Amin on 30th March 1929 to engage the Vakil at fees of Rs.10/- for every day of trial, subject to a maximum of Rs.50/- for th

case. It is stated that the case had 4 sittings for trial, and the Vakil claims Rs.40/-. The claim has been verified by me.

3. I enclose a copy of the order dated 10th June 1929 of the Sub Magistrate in C.C.87 of 1929 on his file, discharging the Amin and the other accused in the case. The Sub Magistrate did not award any compensation to the accused for reasons stated in the concluding paragraph of his order.

Your obedient servant,

For Dt. Magistrate.

16.7.29

Enclosures:- (1) Copy of the order dated 10-6-29 of the Sub Magistrate, Kasargod in C.C.87 of 1929.

(2) Stamped receipt of Vakil, Mr. K. N. Naik.

M.D'S.16/9.

Cr Mis.-123 —29,836-30-1-20

3

CALENDAR AND JUDGMENT

(For use in cases where there are more accused persons than one.)

District of South Kanara.

Calendar of cases tried by the Sb: II class Magistrate of Kasaragod

Offence.	Date of Report or complaint.	Date of Apprehension or appearance of accused.	Date of Commencement of trial.	Date of Close of trial	Date of Sentence or order.	Explanation of Delay and Remarks
24·2·29 Kumbla Police	25·2·29	11·3·29. 11·3·29	7·5·29.	7·6·29.	10·6·29	First posted to 11·3·29 for appearance of the accused. A1 and A2 being absent, case reposted to 25·3·29 for appearance. A1 absent and case reposted to 12·4·29 for appearance. All accused present and case posted for enquiry to 7.5.29 Pws 1 to 5 examined. A list of Suppl. Pws filed and case adjourned to 20.5.29 for further proceedings. Pws 6 to 8 examined. Prosecution closed. Accused examined and case adjourned to 28.5.29 for filing written statements of the accused and for arguments. Written Statements of A1 and A5 filed. Arguments heard and case adjourned to 5.6.29 for judgment. Further arguments heard and case adjourned to 10.6.29 for further proceedings. Disposed of.

Judgment in Calendar Case No. 89 of 1929, on the file of the Sb: II class Magistrate of Kasaragod.

COMPLAINANT. Kumbla (female) By Vakil Mr. B. Amrit Rao

	Name of accused.	Age.	Uncle's ~~Father's~~ name.
1	Rama Belchapada	42	Dugga Pujari
2	Santappa Kottari	24	Bavin Kottari
3	Ramappa	29	Somappa (father)
4	Manjappa Pujari	25	Balu Pujari
5	Sayyid Hamid Sahib	52	Sayyid Razak Sahib (father)
6			

A1 to A4 defended by Vakil Mr. K. Venkat Rao & A5 by Mr. K. Narsinga Rao

	Caste or religion.	Calling.	Residence.	Taluk.
1	Billavar	Govt Telegraph Sub Inspector wearing	Mangalore	Mangalore
2	Kottari		Bolar	"
3	Pujari	Tailor	Jeppu	"
4	"	Servant	Bolar	"
5	Musalman	Amin	Mangalore	"
6				

Offence Housebreaking in order to the commission of an offence punishable with imprisonment and voluntarily causing hurt and abetment thereof - Secs: 454 323 & 114 I.P.C.

nding No case made out

Order Sentence Accused duly discharged under Sec: 253(1) Cr.P.C.

(Say) J. F. Rego
Sb: II class Magistrate.

Date of Receipt

From

The Magistrate

Remarks of the District Magistrate

To

the District Magistrate

Thro'

The Sub-Divisional Magistrate of

Calendar Case No. of 19

Date of Judgment
" Despatch of Calendar
" Receipt
} 19

Date of Despatch
Receipt
} 19

Remarks of the Sub-Divisonal Magistrate.

Reply of the Magistarte

Date of Despatch
" Receipt
} 19

The complainant a woman of Kunjathur village has filed a complaint against the five accused in this case charging them with offences under Secs. 454, 380 I.P.C. as against the four accused and with abetment thereof under Sec: 114 I.P.C. as against the 5th accused who is an amin of the Dt. Munsif's court, Mangalore. The 1st accused is the elder brother of the complainant and is a Govt. Telegraph line man residing at Mangalore and A2 to A4 are said to be his friends in Mangalore. The offence is alleged to have taken place at the complainant's family house in Kunjathur village, where the Amin 5th accused, came with the other accused to effect delivery of the house from the possession of the complainant to that of the decree holder, the 1st accused or his agent.

2. The complainant's case is that the motor

mother who died about two months before the date of the alleged offence had some years ago executed a document in favour of her son, the 1st accused and that the latter had obtained a decree therein against her mother, but that the decree is not binding as against herself, her tenure D.W.6 P.W.5 and her cousin Hiriya, Ichinya do who were not parties to the decree and who are actually in possession of the house which is joint Aliyasanthana family property. It is alleged that about 2 months prior to the present offence A1 with five companions (A2 to A4 and two others) A came from Mangalore with a court dassin to obtain delivery of the house in execution of the court decree but on the objection of the P.W.1 and 5 had to return without effecting delivery. About a month afterwards A1 with the same companions and another court amin, A5 came again a second time. At that time P.W.1's brother

P.W.5

P.w-5 and her sister Chiyo had gone out for work and P.w.1 herself after locked the front door of the house had gone to her vegetable garden to bring greens. When she returned she saw A_5 sitting on a stool in her yard and A_1 and A_2 hammering away at the lock of the door of the house and A_3 and A_4 standing on the Verandah of the house. By the time P.w.1 reached the steps of the verandah A_1 & A_2 had not broken open the door. A_5 told P.w.1 not to enter the house as she had been evicted. P.w.1 replied that she could not have been evicted as she had just locked the house and gone out. A_5 then told her not to handle words and ordered A_1 & A_2 who had already entered the house to throw out her vessels from the house. In order to prevent them doing so

P.w.1

P.W.1 rushed into the house. Accused 3 and 4 who were on the verandah followed her inside. A_2, A_3 & A_4 then held her and beat her with their fists. A_2 held P.W.1 by her hair and P.W.1 caught hold of A_2 by his shirt. A_4 then beat P.W.1 on the head with a stick and P.W.1 fell down bleeding. The two other unknown persons then kicked her after she fell. Her purse and other mud vessels were then thrown out of the house. At that time her brother, P.W.5 arrived at the house. As soon as A1 to A_4 saw him they seized and dragged him to the yard and there beat him and were proposing to tie him up when the arm. A5 who had by that time gone and was standing at the stile of the garden called them away saying, "come away. We shall see tomorrow." All the accused then went away together

3. The points for consideration in this case are (1) whether the accused had authority to evict P.W.1 from the house (2) Whether the accused's procedure was legal (3) Whether P.W.1 was beaten by accused 2 to 4 in the manner and under the circumstances alleged by the prosecution and (4) if so whether the accused abetted such beating.

4. P.W.1 states that until the accused came the first time one month before the offence complained of told her that the house and garden had gone to A1 she had not been aware of any suit filed or decree obtained by A1 against her mother who had died about a month previously. But P.W.1 admits that about 2 months prior to the offence a notice from the court had to come to her brought by a court peon who told her that

it was from A1 and on her thumb
impression in token of its service on
her, that she handed it over to her
brother, P.W.5 who told her that it was
in regard to the property and that he
would see about it. P.W.5 admits
that his uncles had mortgaged the
family property consisting of the house
and garden to some moplahs but
states that his mother, Karthiyanni
and her sister, Poovaiyanni subsequently
discharged the debt by cutting and
selling the trees on the property, but
he has not seen any receipt —
evidencing the discharge of the debt.
His mother was living with her eldest
son A1 in Mangalore, but used to visit
the family house occasionally. P.W.5
admits that after the death of his mother
and at the same time that his sister
he also had received a notice
P.W.1 received the notice, from the D-
Munsiff's Court, Mangalore on behalf
of

of the decree holder the 1st respondent to show cause why the properties should not be delivered to A1. He understood from the notice that the decree had obtained by A1 against his mother and her sister Poovamma. He therefore went to Mangalore and engaged a vakil to contest the execution on the ground that the decree was not binding on the family property. Para 5 states that he is not aware what orders were passed on his objection petition and whether the decree in favour of A1 for possession of the property was set aside or not.

5. The records of O.S. No. 333 on the file of the Dist Munsif's court, Mangalore and of the execution proceedings, R.E.R. 1133/28 resulting therefrom have been filed in this court as exhibits through the clerk of that court who has

report Ex D 131 This warrant had been directed against the defendants in the suit and the persons who opposed the delivery were the children of the defendants who were not parties to the suit. Execution proceedings were taken a second time in R.E.P. 164/49 and the second delivery warrant so issued then is Ex D D. It is directed against all the respondents mentioned in its margin including Nos 1 and 5. This warrant was entrusted to the amin, the 5th accused for execution and it was on the occasion of its attempted execution that the alleged offence is stated to have been committed.

7. The gist of the offence as mis-stated by P.W. 1 in his statement is that when the amin and the other accused arrived they found the house locked and that they broke open the lock and entered the house although they had no orders to do so and that when P.W.1 tried to enter the house the amin seized and handcuffed him. As is report Ex D D 1 mentioning this

this warrant P.W.1 & that when he went there accompanied by P.C. 331 of the Manyshwar Station to effect delivery to A/s agent, Somanappa Belchada as directed in the warrant. P.W.1 & 5 who were in the house refused to quit and tried to attack the said Mainappa Belchada with knives with the result that one Koragappa who came to his assistance sustained a knife injury and the Police constable having realised his inability to cope with the situation they returned from the place without executing the warrant. A5 also submitted a special report, Ex EE detailing the above facts and stating that he could not get further help from the Police Station. The above story is also borne out by the Mahazar, Ex EE/1 submitted by A5 along with his report. It has been signed by A5, P.C. 331 and three others.

P.W.8

P.W.8 the S.H.C Vidyaratna was deposed that deposed that A.S accompanied by one — Kariyappa came to the Police Station and presented the complaint Ex C but that he refused investigation under Sec 157(a) Cr. P.C. as the offence complained of was only one under Sec: 324 I.P.C. He states also that the person who called himself Kariyappa Belchada had simple wound injury on the tip of his right middle finger and that his shirt was torn but the witness is unable to say that he is one of the accused in this case.

P.W.9 states at the time of the arrival of the accused at her house she had gone to the vegetable plot in her garden to pluck greens, but she states that before going she had locked the house. Admittedly she had not expected the visit of the accused that day and the vegetable plot was not far from her house. Admittedly also

also her house did not contain anything of value but only ~~potatoes~~ and mud pots. It is very improbable therefore that she would have locked up ~~her~~ house when going to the vegetable plot close by for a few minutes. I believe that the house had not been locked when the dimin and his party arrived there. P.co.1 admits that she had a billhook in her hand when she returned from the vegetable garden and re-entered the house, but she is unable to say what was done with the knife or who took the knife from her hand. It is very probable that she resisted delivery of the property and that there was a scuffle.

9. According to P.co.1 the time was about midday and this is also clear from the fact that at that time P.co.5 who had gone for ~~the~~ water returned

home for his midday meal. The prosecution has examined P.w.6 the compounder of the Govt Hospital at Kasaragod to prove that P.w.1's injuries were noted and attended to at the hospital on the morning of the next day after the offence. But the entry in the register of injuries maintained at the hospital shows that it relates to Kunhi (female) of Kodiamar village whereas P.w.1 is a resident of Kunjathur and the time at which the injuries were alleged to have been sustained is noted as 8 A.M the previous day while according to the prosecution itself the offence took place at midday. There is no apparent reason for the large difference in time supposing the entry in the register relates to P.w.1

10. As regards the actual facts about it.

the alleged beating of P.w.s 1 and 5 by A2 to A4 the evidence of P.w.s 1 and 5 is discrepant and there are also numerous descrepancies in the evidence of P.ws 2 and 3 who state that they witnessed the offence. Their evidence is inconsistent and unreliable. Considering all the circumstances, I do not see sufficient grounds for framing a charge against the accused. The question of A5's abetment of the alleged offence does not arise. I therefore discharge all the accused under Sec: 253(1) Cr: P.C.

I do not award any compensation under Sec: 250 Cr. P.C. in this case as the complainant is a poor woman ignorant of legal affairs who fancied that she had a grievance in being evicted from the house of h...

for [illegible] by her [illegible]. The Valan for A5 also does not press any claim for compensation.

(Sd) J. F. Nazo
Stg: II cl: Magistrate

Appendix

Witnesses examined for

Prosecution	Defence	Court
1. Kunhe	Nil	1. K. Laxmi Narayana Rao Clerk.
2. Kunhamadde Beary s/o		
3. Soma		
4. Nanjatha		
5. Krishna Kalkar		
6. Victor D'Sa compounder		
7. Kraga Belchada		
8. Laxmana Rao		

Six suspects

Exhibits filed for prosecution

A 24.9.14 Thalgenichit
B 13.10.14 Complaint
C 24.2.29 Amin's report to the S. H. C. Manjeshwar
D " — Notice issued to A5 by the Police

Exhibits filed for defence

Z 23.8.28 Copy of the written statement of Karthamma

Exhibits filed for court

X 23.8.28 Certified copy of the decree in O.S. 333/28 on the file of the Dist Munsif Mangalore.

Y 4.12.28 Execution petition in R.E.P. No 1133/28.

Z 8.1.29 Endorsement re the service of the notice.

AA 10.1.29 Vakalath

BB 24.1.29 Delivery warrant in R.E.P 1133/28.

BB1 26.1.29 Amin's report

CC 19.2.29 Execution petition in R.E.P. 164/29

DD 23.2.29 Delivery warrant "

DD1 28.2.29 Amin's report.

EE 25.2.29 — do —

EE1 24.2.29 Mahazar report

(Sd) J. F. Rego
10.6.29
Stg: Addl Magistrate

/True copy/

Stg: Addl Magistrate

32

40

Received rupees 40-00 forty rupees only-
for my fee in C.C. No 87/29 on the file of the
Stationary Sub. Magte Kasaragod for my
engagement on behalf of the 5th accused as
per proceedings of the Collector of South Kanara
in Dis No 2786/29 dated 30-5-24

on account
18/29. Pleader

Scott. II-5 (a)—48,004—6-11-28. (6)

	Date.	Initials.
When received for Fair-copying.		
When copied ..		
When examined ..		
When signed ..		
When despatched ..		

Law (Genl) DEPARTMENT

Legal assistance

Syed Hamad Saiba - Accd, D. Court S. Kanara. - Pleaders fee - Rs 40 - Sanctioned

READ AGAIN G.O. No. ....., dated 192

" " " " ..... " 192

READ ALSO:—

C. No. 4256B From the D.M. S. Kanara R/C No. 6140/29 dated 14.9 1929.

" " ..... " " ..... " 192

" " ..... " " ..... " 192

ORDER.

No. 3803, dated 1-10- 1929.

To

Fwd. as for acceptance

19.9

19/9 for 21.9

Law (Pl) no 4256 B/1
23.9.29

Dpd. by (1) (2) (3)

30 SEP 1929

Dpd. 30/9/29 192

To

The D.M. S. Kanara

A.G. Fwd. Fwd.

Fwd. Dept.

The Govt sanction the payment of Rs 40 (Rupees forty only) to the pleader engaged to defend Syed Hamad Saiba, an accd of the D. Court, S. Kanara, in C.C. no 87 of 1929 on the file of the Sub. Magl., Kasargod.

2. The expenditure will be debited to "21 b. Admn of Justice - Law Officers - Subsidiary Services - Voted - Mainly fees to Pleaders not in Govt Service."

19.9

19/9 for 21/9

Finance E.R.

The draft order ~~may be~~ as revised accepted and the Case returned to Lawgl.

24.9.29
JCPAN
25.9.29

Elw
~~25.9.29~~ 25.9.29.

Law

4460 B
30.9.29

30 SEP 1929

Immo 30487 ER 1
30.9.29